

# CHAPTER 2

## LEGAL AUTHORITIES



## How BLM employees get direction to Manage Public Lands

*Direction for management of public lands administered by the BLM is multi-tiered.*

*First, Congress authorized the BLM to manage lands and passed laws that provide overall objectives for management of those lands. While one Law, the Federal Land Policy and Management Act, authorizes the BLM to manage specific lands, other laws can provide direction to many government agencies. For example, the Endangered Species Act establishes guidance that must be followed by all federal agencies to protect threatened and endangered species.*

*The Department of the Interior or the BLM then creates regulations and policies that describe how the BLM will act to implement the direction of Congress. Regulations are initially published in the Federal Register and subsequently in the Code of Federal Regulations.*

*Policy direction is then provided to the BLM staff in the form of Manuals and Handbooks. For teams preparing Resource Management Plans the primary references are the NEPA Manual and Handbook and the Planning Manual and Handbook.*

*Executive Orders can also direct and guide management. These orders are issued under the authority of and are signed by the President. An executive order generally recognizes one or more laws and provides instructions for implementing those laws to one or more federal agencies.*

*Laws created by congress (legislative guidance) and executive direction (executive guidance) provided through Department of the Interior or BLM regulations and policy and executive orders that apply to this planning process are listed and briefly described in this chapter.*

*Resource management plans establish specific objectives and guidance for managing lands within a defined planning area or describe specific project level stipulations. The Resource Management Plan and other more site specific guidance will be described in Chapter 4, Existing Management.*

*Project level guidance is the equivalent of a blueprint and architect instructions. Depending on the size and type of project, planning at this level may be almost as complex as developing a Resource Management Plan or may result in very simple and small document. Project specific guidance will not be addressed or described in this document.*

*A final note is that certain regulations, generated by the BLM and other Agencies, provide guidance that directly applies to day to day BLM activities. These include regulations for the management of cultural resources, protecting endangered species, many lands procedures, and several other activities.*

## LEGAL AUTHORITIES

This section briefly describes the legal authorities and planning guidance that provide direction for the BLM land use planning process. These, when combined with the purpose and need for action, establish the scope of the land use plan and set the framework for the decisions to be made in the John Day Basin Environmental Impact Statement and Resource Management Plan. This direction may come from several sources, including Congress, the President, or the Legislature. Guidance and information on how to

implement these directives and laws are developed by resource management agencies such as the BLM, and the departments that oversee them, such as the Department of the Interior.

The following is a list of the primary legal authorities relevant to the John Day Basin RMP.

1. The Federal Land Policy and Management Act of 1976 (FLPMA), as amended, 43 U.S.C. 1701 *et seq.*, provides the authority for BLM land use planning.
2. The National Environmental Policy Act (NEPA), as amended, 42 U.S.C. 4321 *et seq.*, requires the consideration and public availability of information regarding the environmental impacts of major Federal actions significantly affecting the quality of the human environment. This includes the consideration of alternatives and mitigation of impacts.
3. The Clean Air Act, as amended, 42 U.S.C. 7418, requires Federal agencies to comply with all Federal, State and local requirements regarding the control and abatement of air pollution. This includes abiding by the requirements of State Implementation Plans.
4. The Clean Water Act, as amended, 33 U.S.C. 1251, establishes objectives to restore and maintain the chemical, physical, and biological integrity of the Nation's water.
5. The Federal Water Pollution Control Act, 33 U.S.C. 1323, requires the Federal land manager to comply with all Federal, State, and local requirements regarding the control and abatement of water pollution in the same manner and to the same extent as any non-governmental entity.
6. The Safe Drinking Water Act, 42 U.S.C. 201, is designed to make the Nation's waters "drinkable" as well as "swimable." Amendments establish a direct connection between safe drinking water, watershed protection, and management.
7. The Endangered Species Act (ESA) of 1973 (16 U.S.C. 1531 *et seq.*), as amended, directs BLM to 1) conserve Threatened and Endangered Species and the ecosystems upon which they depend, and 2) not contribute to the need to list a species.
8. The Pacific States Bald Eagle Recovery Plan (USFWS 1986) covers the states of Washington, Oregon, Idaho, Montana, Wyoming, California and Nevada. The Plan established recovery population goals, habitat management goals, and 47 management (recovery) zones. The High Cascades and Blue Mountain Zones (zone 11 and 9 respectively) includes the John Day Resource Management Planning Area. The Pacific States Bald Eagle Recovery Plan described specific criteria for the Pacific Recovery Area (PRA) as necessary for delisting.
9. The Wild and Scenic Rivers Act, as amended, 16 U.S.C. 1271 *et seq.*, requires the Federal land management agencies to identify river systems and then study them for potential designation as wild, scenic, or recreational rivers.
10. The Wilderness Act, as amended, 16 U.S.C. 1131 *et seq.*, authorizes the President to make recommendations to the Congress for Federal lands to be set aside for preservation as wilderness.
11. The Antiquities Act of 1906, 16 U.S.C. 431-433, provides guidance for protecting cultural resources on Federal lands and authorizes the President to designate National Monuments on Federal lands.

12. The National Historic Preservation Act (NHPA) of 1966, as amended, 16 U.S.C. 470, expands protection of historic and archaeological properties to include those of national, State, and local significance and also traditional cultural properties, and directs Federal agencies to consider the effects of proposed actions on properties eligible for or included in the National Register of Historic Places.

13. The Archaeological Resources Protection Act of 1979 (ARPA) 16 USC 470, as amended, defines and provides for the protection of archaeological resources on Federal lands, irrespective of eligibility for the National Register of Historic Places, establishes a permit system for resources over 100 years old, and requires agencies to provide for public education and continuing inventory of Federal lands.

14. Executive Order 11593 of 1971, directs Federal agencies to inventory public lands and to nominate eligible properties to the National Register of Historic Places.

15. Executive Order 13287 of 2003 (Preserve America), directs Federal agencies to provide leadership in preserving America's heritage by actively advancing the protection, enhancement, and contemporary use of historic properties managed by the Federal Government, and by promoting intergovernmental cooperation and partnerships for the preservation and use of historic properties, and establishing agency accountability for inventory and stewardship.

16. Native American Graves Protection and Repatriation Act of 1990, 25 U.S.C. 3001, establishes rights to Indian tribes and Native Hawaiians to claim ownership and repatriate human remains, and also funerary, sacred, and other objects, controlled by federal agencies and museums. Agency discoveries of such "cultural items" during land use activities require consultation with appropriate tribes to determine ownership and disposition.

17. The Treaty with the Tribes of Middle Oregon signed June 25, 1855, ratified March 8, 1859 (14 STAT. 751), reserved rights for the Confederated Tribes of Warm Springs to fish, off-reservation, at usual and accustomed stations and to hunt, gather resources, and pasture animals on public lands in common with other citizens of the United States.

17b. The Treaty with the Walla Walla, Cayuse, Etc., signed June 9, 1855, ratified March 8, 1859 (12 STAT. 945), reserved rights for the Confederated Tribes of the Umatilla Indian Reservation to fish, off-reservation, at usual and accustomed stations and to hunt, gather resources, and pasture animals on public lands in common with other citizens of the United States.

18. The American Indian Religious Freedom Act of 1978, 42 U.S.C. 1996, establishes a national policy to protect and preserve the right of American Indians to exercise traditional Indian religious beliefs or practices including but not limited to access to religious sites. Agencies are to avoid unnecessary interference with traditional tribal spiritual practices. Also, compliance requires consultation with tribes when land uses might conflict with Indian religious beliefs or practices.

19. The Recreation and Public Purposes Act, as amended, 43 U.S.C. 869 et seq., authorizes the Secretary of the Interior to lease or convey BLM managed lands for recreational and public purposes under specified conditions.

20. The Onshore Oil and Gas Leasing Reform Act, 30 U.S.C. 181 et seq., provides:

- a. Potential oil and gas resources be adequately addressed in planning documents;
- b. The social, economic, and environmental consequences of exploration and development of oil and gas resources be determined; and
- c. Any stipulations to be applied to oil and gas leases be clearly identified.

21. The General Mining Law, as amended, 30 U.S.C. 21 et seq., allows the location, use, and patenting of mining claims on sites on public domain lands of the United States. Amendments established a policy of fostering development of economically stable mining and minerals industries, their orderly and economic development, and studying methods for disposal of waste and reclamation.

22. The Taylor Grazing Act, 43 U.S.C. 315, authorizes the Secretary of the Interior to establish or add to grazing districts in vacant unappropriated and unreserved lands from any part of the public domain which are chiefly valuable for grazing and raising forage crops.

23. The Public Rangelands Improvement Act, 43 U.S.C. 1901, provides that the public rangelands be managed so that they become as productive as feasible in accordance with management objectives and the land use planning process established pursuant to 43 U.S.C. 1712.

24. Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations), (49 FR 7629), requires that each Federal agency consider the impacts of its programs on minority populations and low income populations.

25. Executive Order 13007 of 1996 (Indian Sacred Sites), (61FR104), explicitly does not create any new right for Indian tribes, but does require Federal agencies to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions to:

- a. Accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners;
- b. Avoid adversely affecting the physical integrity of such sacred sites; and
- c. Maintain the confidentiality of sacred sites.

26. Executive Order 13175 of 2000 (consultation and Coordination with Indian Tribal Governments) provides, in part, that each Federal agency shall establish regular and meaningful consultation and collaboration with Indian tribal governments in the development of regulatory practices on Federal matters that significantly or uniquely affect their communities.

27. Executive Order 13112 (Invasive Species) provides that no Federal agency shall authorize, fund or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species unless, pursuant to guidelines that it has prescribed, the agency has determined and made public its determination that the benefits of such actions clearly outweigh the potential harm caused by invasive species; and that all feasible and prudent measures to minimize risk or harm will be taken in conjunction with the actions.

28. Secretarial Order 3206 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act) requires DOI agencies to consult with Indian Tribes when agency actions to protect a listed species, as a result of compliance with ESA, affect or may affect Indian lands, tribal trust resources, or the exercise of American Indian tribal rights.

29. The Federal Cave Resources Protection Act of 1988, 16 USC 4301, requires federal agencies to identify, protect and maintain significant caves. The locations of such caves may be kept confidential. Protection is afforded not only to the geologic structure, but also the associated decorations, inhabitants, artifacts, and water resources.

30. Resource Conservation and Recovery Act (RCRA, Pub. L. 94-580), as amended. In 1976 RCRA established a system for managing non-hazardous and hazardous solid

wastes in an environmentally sound manner. Specifically, it provides for the management of hazardous wastes from the point of origin to the point of final disposal (i.e., “cradle to grave”). RCRA also promotes resource recovery and waste minimization.

31. Executive Order 13212. “It is the policy of this Administration that executive departments and agencies (agencies) shall take appropriate actions, to the extent consistent with applicable law, to expedite projects that will increase the production, transmission, or conservation of energy.”

32. Wild Horse and Burro Act of 1971, as amended, gave responsibility for the management and protection of these animals to the U.S. Department of the Interior to be administered by the BLM and to the Department of Agriculture to be administered by the Forest Service.

33. Executive Order 11644 (37 FR 2877), on February 8, 1972, provided that OHV use will be controlled and managed to protect resource values, promote public safety and minimize conflicts with uses of public lands. This executive order directed federal agencies to designate specific areas and trails on public lands where OHV use may be permitted and areas where OHV use may not be permitted.

34. On May 24, 1977, President Carter amended this order with Executive Order 11989. This executive order further defined OHV, administrative use exemptions, and directed agencies to immediately close areas and trails whenever the agency determines that the use of OHV will cause or is causing considerable adverse effects on the soil, wildlife, and wildlife habitat, cultural or historic resources (42 USC 4321).

35. The Bureau of Land Management’s National Management Strategy for Motorized Off-Highway Vehicle Use on Public Lands (2001) provides agency guidance and offers recommendations for future actions to improve motorized vehicle management.

36. The Bureau of Land Management, “National Sage-Grouse Habitat Conservation Strategy” (2004) sets broad goals and specific actions to meet the goals for protecting sage grouse and sage grouse habitat.

37. The Carlson-Foley Act (PL 90-583 codified in 43 USC 1241) establishes legal guidance and responsibility for the management of weeds on federal lands. This law authorizes federal agencies to allow states to take weed control measures on federal lands.

38. Oregon Land Exchange Act of 2000, as described in Chapter 1, requires that “lands acquired...within the North Fork of the John Day subwatershed be managed primarily for the protection of native fish and wildlife habitat, and for public recreation but that other authorized uses may be allowed if, through a land use planning process, it is determined that such uses are consistent with, and do not diminish the primary management purposes.”

39. BLM planning regulations (43 CFR 1610.4-3 and 1610.4-6) require that resource management plans consider social, economic, and institutional information.

41. Federal Wildland Fire Management Policy 2001

42. The 1995 Interim Strategies for Managing Anadromous Fish-producing Watersheds in Eastern Oregon and Washington, Idaho, and Portions of California (USDA-FS & USDI-BLM 1995), commonly referred to as PACFISH, provides guidance for managing and monitoring grazing lands adjacent to streams where anadromous fish are present or potentially present.

